

ESTTA Tracking number: **ESTTA619160**Filing date: **08/03/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	BIO CLEAN, INC.		
Entity	Corporation	Citizenship	Washington
Address	3316 Old Hartford Road, #A2 Lake Stevens, WA 98223 UNITED STATES		
Attorney information	Robert R. Waters Waters Law Group, PLLC 12802 Townepark Way Suite 200 Louisville, KY 40243 UNITED STATES rrwaters@waterslawgroup.com Phone:502-425-2424		

Registration Subject to Cancellation

Registration No	3662396	Registration date	08/04/2009
Registrant	METH LAB CLEANUP LLC 2994 E. Sable Court Athol, ID 83801 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2003/07/00 First Use In Commerce: 2003/07/00
All goods and services in the class are cancelled, namely: Training services in the field of clandestine drug lab decontamination and cleanup

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Related Proceedings	Cancellation No. 92059311
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Attachments	Petition to Cancel - 396.pdf(118656 bytes) Exhibit A - 396.pdf(519066 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ Robert R. Waters /
Name	Robert R. Waters
Date	08/03/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BIO CLEAN, INC.)	
3316 OLD HARTFORD ROAD, #A2)	Cancellation No.:
LAKE STEVENS, WA 98223)	
)	
Petitioner,)	
)	
v.)	
)	<i>In re:</i>
METH LAB CLEANUP, LLC)	Registration Number: 3,662,396
2994 E. SABLE COURT)	Registered: August 4, 2009
ATHOL, IDAHO 83801)	
)	For the Service Mark
Registrant-Respondent.)	METH LAB CLEANUP, LLC

PETITION TO CANCEL

Petitioner, Bio Clean, Inc., a Washington corporation having its principal place of business at 3316 Old Hartford Road, #A2, Lake Stevens, Washington, 98223, by counsel, believes that it is and will continue to be damaged by Registration No. 3,662,396 (the `Registration_), issued on the Principal Register on August 4, 2009 to Meth Lab Cleanup, LLC (`Registrant-Respondent_ or `Respondent_) for the service mark METH LAB CLEANUP, LLC for `Training services in the field of clandestine drug lab decontamination and cleanup, in Class 41 (U.S. cls. 100, 101 and 107)_ and hereby petitions to cancel said Registration. A copy of the Registration is attached as Exhibit A.

To the best of Petitioner's knowledge, the name and address of the current owner of the Registration is Meth Lab Cleanup, LLC, an Idaho limited liability company, located at 2994 E. Sable Court, Athol, Idaho 83801.

The grounds for cancellation are as follows:

STANDING

1. The Registration is inconsistent with Petitioner's right to use the term, 'meth lab cleanup', on similar goods or services as a descriptive or generic designation of the Petitioner's goods and services, and as such Petitioner is damaged.

BACKGROUND

2. The Registration is less than 5 years old, and consists exactly of the name of the services performed by the Petitioner for over fourteen years.

3. Petitioner is and has been for many years engaged in the business of meth lab cleanup, crime scene cleanup, and decontamination, including surveying, testing, assessing, and cleaning or remediating clandestine or illegal methamphetamine drug laboratories in accordance with federal, state, or local requirements.

4. On information and belief, Registrant-Respondent is engaged in the business of training, evaluation, testing, and consulting on the cleanup of hazardous and illegal drug lab sites.

5. Petitioner has been engaged in the business of meth lab cleanup services long before the Registrant began using the alleged service mark `Meth Lab Cleanup LLC`.

6. Petitioner and Respondent are generally familiar with each other's businesses as they have generally been competitors to some extent, although the Respondent's business activities appear to be much more limited in scope.

7. The Petitioner first went into business in 1998, serving the public throughout the Northwestern United States, performing crime scene cleanup remediation services.

8. In 2000, Petitioner first became licensed by the State of Washington to clean up meth labs, and since then, the Petitioner has been advertising its meth lab cleanup services and performing meth lab cleanups as a regular business offering.

9. Petitioner has worked extensively over the last fourteen years in the industry of meth lab cleanup and is very knowledgeable of the industry, and has been successful in the industry.

10. Petitioner has advertised extensively and continuously its meth lab cleanup services and created extensive and widespread goodwill in its services.

11. Based upon the Petitioner's knowledge and experience of the industry, the Petitioner knows that the term `meth lab cleanup` has NOT developed a secondary meaning or an inference of any kind as it relates to the Respondent and the Respondent's business.

12. On September 4, 2007, Respondent, through its counsel, began applying for service mark registrations for its business name `METH LAB CLEANUP LLC_ under provisions of Section 1(a) of the Trademark Act of 1946, as Amended (15 U.S.C. § 1051). This included the current registration that is the subject of this cancellation proceeding.

13. In its application, Respondent claimed a first use in commerce date of at least as early as 07/00/2003.

14. On December 10, 2007, during the prosecution of Respondent's application, the USPTO examining attorney sent an office action to Respondent refusing registration under Trademark Act Section 2(e)(1), on the basis that the proposed mark merely describes the field or subject matter of the training.

15. The examining attorney specifically found that the `wording `METH LAB CLEANUP_ is merely descriptive of the field or subject matter of the training and the term `LLC_ is merely an entity designation. _

16. On June 9, 2008, Respondent, through its counsel, submitted its Response to this office action that was generally unpersuasive.

17. On July 1, 2008, the USPTO examining attorney sent an office action to Respondent issuing a final refusal to register the mark pursuant to Section 2(e)(1); maintaining the determination that the mark is merely descriptive.

18. On October 30, 2008, Respondent, through its counsel, filed its Request for Reconsideration after Final Action stating that, pursuant to Section 2(f) and based on use, the mark has become distinctive of the goods/services through the Respondent's substantially exclusive and continuous use in commerce for at least five years immediately before the date of the statement.

19. On November 12, 2008, the USPTO examining attorney sent an Office Action to Respondent stating the USPTO accepted Respondent's Section 2(f) claim of acquired distinctiveness in response to the USPTO's Section 2(e)(1) merely descriptive refusal. The USPTO, however, required Respondent to disclaim the term LLC in connection with its Section 2(f) claim as the term is generic.

20. On August 4, 2009, the mark was registered.

GENERIC

21. At the time of registration, the mark was generic and therefore not entitled to registration.

22. The mark continues to be generic and not entitled to registration.

23. The mark is generic because 'meth lab cleanup' is the specific field and subject matter of the training services that are attempted to be protected by the service mark, and this phrase has been used for many years by many providers of meth lab cleanup services throughout the United States to identify the services they provide. Likewise, the phrase 'meth lab cleanup' is generally used by law enforcement and public health regulatory bodies throughout the country to describe the service of cleaning up meth labs.

24. The addition of the business identifier 'LLC' does nothing to alter the generic nature of the mark, as it provides no distinctive modifier which could be used to distinguish the Respondent's services from that of other meth lab cleanup contractors.

25. Registrant's registration of the mark restricts the right of Petitioner, and other similar businesses, to use the generic terms 'Meth Lab Cleanup' in connection with the cleanup of illegal methamphetamine labs.

26. Petitioner, along with others in the meth lab cleanup industry, has been subjected to intimidation and threats of legal action if they continue to advertise that they perform meth lab cleanup services, as they have done for many years.

27. Petitioner has a reasonable expectation that if it continues to advertise and provide meth lab cleanup services with the generic identification 'Meth Lab Cleanup' it will continue to be subject to intimidation and possible legal action by Respondent.

28. Petitioner has been and will continue to be damaged by the existence of this Registration because the existence of said service mark is a source of commercial uncertainty and provides Respondent with *prima facie* ownership of a generic phrase.

MERELY DESCRIPTIVE

29. Alternatively, at the time of registration, the mark was merely descriptive, lacking secondary meaning, and therefore not entitled to registration.

30. The mark continues to be merely descriptive, without secondary meaning, and not entitled to registration.

31. The use of the phrase 'Meth Lab Cleanup' by the Respondent since 2003 has not resulted in a secondary meaning attaching to the phrase because during the same period and before, that phrase has been used by numerous other competitors to describe the identical services they provide.

32. The public and those working in conjunction with the real estate, construction, insurance and rehabilitation industries do not associate the phrase `Meth Lab Cleanup` as being an exclusive identifier of the Respondent; rather, the industry and public attribute no secondary meaning of the mark in question to the Respondent or the respondent's services.

33. The fact that the Respondent has chosen to name itself `Meth Lab Cleanup, LLC` does not equate to secondary meaning, and secondary meaning is lacking with respect to the Respondent and this attempted mark.

34. Registrant's registration of the mark restricts the right of the Petitioner as well as other similar business that have used this phrase for many years to describe their services of cleaning up meth labs.

35. Registrant has used and threatened to use the registration to interfere with the Petitioner's offering of meth lab cleanup services and is a source of damage and injury to the Petitioner.

FRAUD IN THE PROCUREMENT OF THE MARK

36. Respondent's registration was obtained fraudulently.

37. Having been refused registration of the mark by the US Trademark Office Examiner in light of the mark being merely descriptive under Section 2(e)(1), Respondent, Meth Lab Cleanup, LLC, operating through counsel, filed a knowingly fraudulent Request for Reconsideration seeking registration under Section 2(f) claiming the mark had become distinctive of the goods/services through the Respondent's

substantially exclusive and continuous use in commerce for at least the five years immediately before the date of the statement.

38. Specifically and with particularity, the registered mark was fraudulently obtained by virtue of Respondent's submission of a knowingly false affidavit dated October 30, 2008, wherein the affiant stated that the mark had become distinctive of the goods/services through the Respondent's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement and the knowingly false verified declaration supporting that statement.

39. The Respondent and its principals specifically knew that the Affidavit was false at the time of submission, since they specifically knew of many other businesses that had used the alleged mark for many years, including the Petitioner and others. The Respondent knew that the Respondent's use of "meth lab cleanup" had not been substantially exclusive for a period of five years or more.

40. Respondent knowingly withheld important and material information, or otherwise failed to disclose its knowledge of the use of the mark by others, to the USPTO with intent to deceive the examining attorney and in bad faith in order to fraudulently obtain a registration for a generic or merely descriptive term to which it is not entitled.

41. The USPTO examining attorney relied on Respondent's knowingly false statement in approving the Registration.

42. Had the truth been known, the USPTO examining attorney would not have issued the Registration.

43. Petitioner is damaged by Respondent's knowingly false statements made to the examining attorney, and the subsequent registration granted in reliance thereon to Respondent.

44. Petitioner must be able to identify its services for its target consumers (federal, state, and local governmental health agencies and law enforcement agencies) and the most common and readily understood identification of the service provided is 'Meth Lab Cleanup.'

45. Petitioner's inability to use 'Meth Lab Cleanup' to identify its meth lab cleanup services places it at a commercial disadvantage and is the source of significant damage and injury to Petitioner.

46. If Registrant is permitted to retain the registration sought to be cancelled, and thereby the *prima facie* exclusive right to use in commerce the term 'Meth Lab Cleanup' in connection with the cleanup of illegal meth labs, Petitioner and other similar businesses will be subject to intimidation and interference with legitimate commercial interests.

RELIEF SOUGHT

WHEREFORE, Petitioner requests that:

1. Registration No. 3,662,396 for the service mark METH LAB CLEANUP LLC be cancelled;
2. Petitioner be awarded its costs and reasonable attorneys' fees, if appropriate, pursuant to the Federal Rules of Civil Procedure and the Rules of the USPTO and the TTAB; and
3. Such other relief as the court deems just and proper.

Dated: August 3, 2014

Respectfully submitted,

WATERS LAW GROUP, PLLC

/ s / R o b e r t R . W a t e r s
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EXHIBIT A

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,662,396

Registered Aug. 4, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

METH LAB CLEANUP LLC

METH LAB CLEANUP LLC (IDAHO LIMITED
LIABILITY COMPANY)

1628 E TALL TIMBER LOOP

POST FALL, ID 83854

FOR: TRAINING SERVICES IN THE FIELD OF
CLANDESTINE DRUG LAB DECONTAMINATION
AND CLEANUP, IN CLASS 41 (U.S. CLS. 100, 101
AND 107).

FIRST USE 7-0-2003; IN COMMERCE 7-0-2003.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "LLC", APART FROM THE MARK
AS SHOWN.

SEC. 2(F).

SER. NO. 77-271,496, FILED 9-4-2007.

SALLY SHIH, EXAMINING ATTORNEY